

TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

Minutes
October 26, 2006
1:00 p.m.

The regular meeting of the Tennessee Alcoholic Beverage Commission was held on Thursday, October 26, 2006 in Nashville, Tennessee at 9:30 a.m. Chairman John Jones and Commissioner Cynthia Bond were present. Although Commissioner Harlan Mathews was not in attendance, a quorum was present and the meeting was held. Executive Director Danielle Elks, CLEO Mark Hutchens and ASAC Andy Woodall from the staff, were present.

1. The Minutes for September 28, 2006 Commission Meeting were approved.

2. RETAIL PACKAGE STORES

A. M.E. WINE AND LIQUORS
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)

Applicant: Maddox Enterprises, LLC
Members: Dan Maddox and James Maddox

Before the Commission is a request for a new package store to be located at 6670 Charlotte Pike in Nashville, Tennessee. This proposed store will be adjacent to the new Costco location. Dan and James Maddox have made application for this establishment, proposing to own 50% each. As of the date of this agenda, the agency has not yet received a sub-lease to the applicant. The applicants intend to invest approximately \$170,000. Financing is based upon a trust for Dan Maddox, and personal savings deposited at AmSouth for James Maddox. All documentation has been submitted with the exception of the following:

- a. Sub-lease;
- b. Statement from James Maddox that he has no interest, directly or indirectly, in the operation or sharing in the profits of HSC, LLC;
- c. Use and Occupancy;
- d. TABC Inspection;
- e. Acknowledgement of the rules and regulations;
- f. Copy of trust for Dan Maddox;
- g. Statement from AmSouth that Jean Maddox is not a joint owner of James Maddox's savings account.

Discussion/Action Taken:

Dan Maddox and William Cheek, III, attorney, were present at the meeting. Director Elks reviewed the application for the Commissioners and she stated that the proposed retail store is located next to a Costco location. Director Elks brought this to the attention of the Commission because retail stores next to Costco and Sam's Club locations generate public interest and concerns. She stated that Dan and James Maddox are father and son and each is proposing to own 50% each. Director Elks stated that a statement was requested from James Maddox because he had been a stockholder in HSC, LLC—the licensee for a retail store located at the Costco in Brentwood, Tennessee. In a previous Commission meeting, the Commission approved Mr. James Maddox selling his interest to his wife. Director Elks stated that Ron Hermann is the sub-lessor for M. E. Wine and Liquors and is receiving approximately \$6,000 per month for rent. However, Director Elks advised Mr. Maddox that Mr. Hermann can have no direct or indirect interest but for the lease; nor can he influence the orders or accountings at the store. Mr. Maddox acknowledged that neither Costco nor Mr. Hermann can have any interest other than that of landlord. Commissioner Bond made a motion to approve upon submission of the Use and Occupancy permit, the TABC inspection and acknowledgment of the rules and regulations. Chairman Jones seconded the motion and it passed with 2 ayes.

**B. PICKWICK PACKAGE STORE
SAVANNAH, TENNESSEE (HARDIN COUNTY)**

Licensee: John A. Long

Before the Commission is a request for transfer of location of the retail store currently located at 380 Pickwick Street, Tennessee, to 360 Pickwick Street. The State of Tennessee has condemned the property where the store is currently located to allow the widening of the street. The landlord will build a new building on the nearby, and will have the address of 360 Pickwick Street. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Use and Occupancy; and
- c. Affidavit of publication from newspaper.

Discussion/Action Taken:

Director Elks reviewed the application for the Commissioners. She recommended approval upon submission of the TABC inspection, Use and Occupancy permit and affidavit of publication from newspaper. Commissioner

Bond made a motion to approve upon submission of the pending documentation. Chairman Jones seconded the motion and it passed with 2 ayes.

**C. DISCOUNT LIQUORS AND WINES
KINGSTON SPRINGS, TENNESSEE (CHEATHAM COUNTY)**

Applicant: Discount Liquors and Wines, LLC
Member: Wayne Collins

Before the Commission is a request for a new retail store to be located at 123 Luyben Hills Road in Kingston Springs, Tennessee. Mr. Wayne Collins intends to initially invest approximately \$35,000 in this business, and operate it as an LLC. Financing is based upon personal funds in Community Bank. Mr. Collins personally owns the property, as well as the hotel also on the property. He will lease the property to the Discount Liquors and Wines, LLC for \$100 per month. All documentation has been submitted with the exception of the following:

- a. Acknowledgement of the Rules and Regulations;
- b. TABC Inspection; and
- c. Verification the store is not inside the hotel

Discussion/Action Taken:

Mr. Wayne Collins was present at the meeting. Director Elks reviewed the application for the Commissioners. She recommended approval. Commissioner Bond made a motion to approve. Chairman Jones seconded the motion and it passed with 2 ayes.

**D. DOWNTOWN WINE AND SPIRITS, LLC
KNOXVILLE, TENNESSEE (KNOX COUNTY)**

Applicant: Downtown Wine and Spirits, LLC
Members: David Ewan and Trinity McDermott

Before the Commission is a request for a new retail store to be located at 407 S. Gay Street in Knoxville, Tennessee. Mr. David Ewan and Trinity McDermott intend to initially invest \$75,000, with Mr. Ewan owning 60%, and Ms. McDermott owning 40%. The business would be operated as an LLC. Financing is based personal funds in Amsouth and a brokerage account. 411 Gay Street, LLC is leasing the location to Downtown Wine and Spirits, LLC for \$1500.00 per month. All documentation has been submitted with the exception of the following:

- a. Written approval from landlord to use property as retail store;
- b. Term of lease;
- c. Verification of independent financing for Trinity McDermott (Checking account is a joint account with Mark McDermott, who is an LBD licensee);
- d. TABC Inspection;
- e. Acknowledgement of the rules and regulations; and
- f. Use and Occupancy permit.

Discussion/Action Taken:

Director Elks reviewed the application for the Commissioners. She recommended approval upon submission of the following documentation:

- a. Written approval from landlord to use property as retail store;
- b. Term of lease;
- c. Verification of independent financing for Trinity McDermott (Checking account is a joint account with Mark McDermott, who is an LBD licensee);
- d. TABC Inspection;
- e. Acknowledgement of the rules and regulations; and
- f. Use and Occupancy permit.

. Commissioner Bond made a motion to approve upon submission of the pending documentation. Chairman Jones seconded the motion and it passed with 2 ayes.

3. WINERY: J-6 WAIVERS

T.C.A. §57-3-207 allows Tennessee wineries to provide complimentary samples for tasting at the winery if such winery uses certain percentages of agricultural products produced in Tennessee in its wine production. This same statute provides that wineries may request a waiver of the requirement to use Tennessee agricultural products if the commissioner of agriculture certifies that the source or sources of Tennessee agricultural products anticipated by the requesting winery will not be available in whole or in part for some reason which the winery had no control. To qualify for the waiver, the winery must have filed statements and/or contracts with the TABC on or before June 15 of the current year indicating what products the winery anticipates using in its production. If the waiver is granted, then the winery may obtain product from out-of-state for use in producing its wine.

The Tennessee Department of Agriculture has provided certification to the TABC that the following varieties of grapes are not available from Tennessee producers: **Alwood, Baco Noir, Cabernet, Cabernet Franc, Cabernet Sauvyanon, Campbell's Early, Catawba, Cayuga, Chambourcin, Chancellor, Chardonelle, Chardonay, Concord, Cynthiana, De Chaunac, Edelweiss, Elvira, Foch, Fredonia, Gewurztraminer, Golden Muscat, Ives, Kaye Gray, Martha, Merlot, Muscadine, Niagara, Peite Verdot, Pinor Gris, Riesling, Rogeon, Sauvignon Blanc, Seyval Blanc, Shiraz, Steuden, Sunbelt, Syrah, Traminette, Vidal, Viognier, and Zinfandel.** This lack of Tennessee grapes appears to be because a dry season and an influx of black rot fungus.

The Tennessee Department of Agriculture further certifies that the following other fruits are insufficient in quantity in Tennessee: **Apple, blackberry, blueberry, cherries, honey, peach, raspberry, rhubarb, and strawberry.**

The following wineries timely filed contracts and/or statements with the TABC and have requested the J-6 waivers:

A. Apple Barn Winery (Sevierville, Tennessee)

Apple Barn Winery requests a J-6 waiver for the following products, all but one of which have been certified by the Tennessee Department of Agriculture to be unavailable from Tennessee producers:

Concord (5 tons), Red Raspberry (20 tons), Strawberry (15 tons), Peach (15 tons), Blackberry (2 tons), Blueberry (2 tons), Merlot (10 tons), and Pinot Gris (6.5 tons).

Apple Barn has also requested a waiver for Cranberries (10 tons); however, the Department of Agriculture has not certified this item as unavailable.

Discussion/Action Taken:

Chairman Jones made a motion to approve the J-6 waiver for all listed items but the Cranberries. Commissioner Bond seconded the motion and it was approved with 2 ayes.

B. Beachaven Vineyards and Winery (Clarksville, Tennessee)

Beachaven Vineyards and Winery requests a J-6 waiver for the following products, all but one of which have been certified by the Tennessee Department of Agriculture to be unavailable from Tennessee producers:

Blackberry (4500 gallons), Cabernet Sauvyanon (10 tons), Chardonnay (14 tons), Red Muscadine (6500 gallons), White Muscadine (6500 gallons) Gewurztrminer/Traminette (5000 gallons), Raspberry (21 tons), Syrah (10 tons).

Beachaven has also requested a waiver for **Yiognier (10 tons)**; however, the Department of Agriculture has not certified this item as unavailable.

Discussion/Action Taken:

Mr. Kip Summer was present at the meeting. Mr. Summer stated that Beachaven is withdrawing the request for Red Muscadine. Mr. Summer also stated that the Yiognier grape was misspelled, and was actually the Viognier grape—which has been certified as unavailable by the Department of Agriculture. Commissioner Bond made a motion to approve the J-6 waiver for all items listed. Chairman Jones seconded the motion and it was approved with 2 ayes.

C. Chateau Ross Vineyards and Winery (Springfield, Tennessee)

Chateau Ross Vineyards and Winery requests a J-6 waiver for the following products, all of which have been certified by the Department of Agriculture as unavailable:

Petite Syrah (3 tons), Zinfandel (1 ton), Cabernet Sauvyanon (2 tons), and Gewertraminer (260 gallons).

Discussion/Action Taken:

Director Elks recommended approval for the J-6 Waiver. Commissioner Bond made a motion to approve the J-6 waiver for all items listed. Chairman Jones seconded the motion and it was approved with 2 ayes.

D. Highland Manor (Jamestown, Tennessee)

Highland Manor requests a J-6 waiver for the following products, all of which have been certified by the Tennessee Department of Agriculture to be unavailable from Tennessee producers:

White Reisling (1100 gallons), Concord (550 gallons), and Niagra (550 gallons).

Discussion/Action Taken:

Director Elks recommended approval for the J-6 Waiver. Commissioner Bond made a motion to approve the J-6 waiver for all items listed. Chairman Jones seconded the motion and it was approved with 2 ayes.

E. Holly Ridge Winery and Vineyard (Livingston, Tennessee)

Holly Ridge Winery and Vineyard requests a J-6 waiver for the following products, all of which have been certified by the Tennessee Department of Agriculture to be unavailable from Tennessee producers:

Red Muscadine (1 ton), Cabernet (1 ton), Zinfandel (2 tons), Concord (120 gallons), Riesling (120 gallons), Rogeon (60 gallons), and Chardonnay (60 gallons).

Discussion/Action Taken:

Director Elks recommended approval for the J-6 Waiver. Commissioner Bond made a motion to approve the J-6 waiver for all items listed. Chairman Jones seconded the motion and it was approved with 2 ayes.

F. Keg Springs Winery (Hampshire, Tennessee)

Keg Springs Winery requests a J-6 waiver for the following products, all but one of which have been certified by the Tennessee Department of Agriculture to be unavailable from Tennessee producers:

Concord (1000 gallons), Muscadine (1000 gallons), Seyval Blanc (1000 gallons), and Niagara (250 gallons).

Keg Springs Winery has also requested a J-6 waiver for **Blanc DuBois (1000 gallons)**; however, the Department of Agriculture has **not** certified this item as unavailable.

Discussion/Action Taken:

Director Elks recommended approval for the J-6 Waiver. Commissioner Bond made a motion to approve the J-6 waiver for all items listed except for Blanc DuBois. Chairman Jones seconded the motion and it was approved with 2 ayes.

G. Lauderdale Cellars (Ripley, Tennessee)

Lauderdale Cellars requests a J-6 waiver for the following products, all of which have been certified by the Tennessee Department of Agriculture to be unavailable from Tennessee producers:

Niagara (3000 gallons), Cynthiana (2500 gallons), Cabernet Savignon (500 gallons), Shiraz (500 gallons), Muscadine (1000 gallons), Savignon Blanc (1000 gallons), Riesling (1000 gallons).

****It should be noted that the TABC has not received grape contracts from Lauderdale Cellars as is required by T.C.A. §57-3-207.**

Discussion/Action Taken:

Director Elks stated that in the past when the wineries did not submit their contracts, which is a prerequisite that is required by the statutes to obtain a J-6 Waiver, but still requested a J-6 Waiver, the Commission approved the J-6 Waiver subject to the issuance of their contracts and the payment of the fine for failure to submit their contracts. That fine was for \$100.00. Director Elks recommended this in this matter. Commissioner Bond made a motion to approve the J-6 Waiver upon submission of the contracts and the payment of the \$100 fine. Chairman Jones seconded the motion and it was approved with 2 ayes.

H. Mountain Valley Vineyards (Pigeon Forge, Tennessee)

Mountain Valley Vineyards requests a J-6 waiver for the following products, all of which have been certified by the Tennessee Department of Agriculture to be unavailable from Tennessee producers:

Blackberry (20 tons), Red Raspberry (15 tons), Concord (20 tons), Merlot (15 tons), Cayuga (10 tons), and Pinot Gris (13.5 tons).

Discussion/Action Taken:

Director Elks recommended approval for the J-6 Waiver. Commissioner Bond made a motion to approve the J-6 waiver for all items listed. Chairman Jones seconded the motion and it was approved with 2 ayes.

I. Old Millington Vineyard and Winery (Millington, Tennessee)

Old Millington Vineyard and Winery requests a J-6 waiver for the following products, all of which have been certified by the Tennessee Department of Agriculture to be unavailable from Tennessee producers:

Muscadine (825 gallons) and Vidal (825 gallons).

**It should be noted however, that Old Millington Vineyard and Winery has not submitted grape contracts to the TABC pursuant to T.C.A. §57-3-207.

Discussion/Action Taken:

Director Elks stated that Old Millington did not submit their contracts, so, therefore, she recommended that they would also need to furnish their contracts and have a fine of \$100 assessed against them. Commissioner Bond made a motion to approve the J-6 Waiver upon submission of the contracts and the payment of the \$100 fine. Chairman Jones seconded the motion and it was approved with 2 ayes.

J. Savannah Oaks Winery (Delano, Tennessee)

Savannah Oaks Winery grows its own crop, and does not have contracts with Tennessee producers. However, it is requesting a J-6 waiver for the following products, all of which have been certified by the Tennessee Department of Agriculture to be unavailable from Tennessee producers:

Merlot (250 gallons), Cabernet Sauvignon (250 gallons), Concord (500 gallons), Catawba (500 gallons), Baco (500 gallons), Stubin (500 gallons), Muscadine (500 gallons), Raspberry (100 gallons), Blueberry (100 gallons), and Blackberry (100 gallons).

Discussion/Action Taken:

Director Elks recommended approval for the J-6 Waiver. Commissioner Bond made a motion to approve the J-6 waiver for all items listed. Chairman Jones seconded the motion and it was approved with 2 ayes.

K. Strikers' Premium Winery (Athens, Tennessee)

Strikers' Premium Winery requests a J-6 Waiver for the following products, all of which have been certified by the Tennessee Department of Agriculture to be unavailable from Tennessee producers:

Cabernet Sauvignon and Blackberry.

Verification to be made on the amount of grapes and fruit requested. Also, verification of submission of contracts as required by T.C.A. 57-3-207.

Discussion/Action Taken:

Director Elks recommended approval for the J-6 Waiver subject to the verification of the amount of grapes and fruit requested and the submission of the contracts and the appropriate fine for failure to submit the contracts. Commissioner Bond made a motion to approve the J-6 waiver for all items listed. Chairman Jones seconded the motion and it was approved with 2 ayes.

L. Stonehaus Winery (Crossville, Tennessee)

Stonehaus Winery requests a J-6 waiver for the following products, all of which have been certified by the Tennessee Department of Agriculture to be unavailable from Tennessee producers:

Cayuga (1650 gallons), and Steuben.

Verification to be made on the amount of Steuben requested.

Discussion/Action Taken:

Director Elks recommended approval for the J-6 Waiver subject to the verification of the amount of Steuben grapes requested. Commissioner Bond made a motion to approve the J-6 waiver upon submission of the amount of Steuben requested. Chairman Jones seconded the motion and it was approved with 2 ayes.

M. Summer Crest Winery (Portland, Tennessee)

Summer Crest Winery requests a J-6 waiver for the following products, all but one of which have been certified by the Tennessee Department of Agriculture to be unavailable from Tennessee producers:

Concord (2000 gallons), Merlot (3.25 tons), Riesling (500 gallons), Vidal Blanc (750 gallons), Seyval Blanc (500 gallons), Chambourcin (275 gallons), and Dechannac (275 gallons).

Summer Crest Winery has also requested **Pinot Noir (3.25 tons)**; however, this variety of grape has not been certified by the Department of Agriculture as unavailable.

Discussion/Action Taken:

Chairman Jones made a motion to approve the J-6 waiver for all listed items but Pinot Noir. Commissioner Bond seconded the motion and it was approved with 2 ayes.

N. Tennessee Valley Winery (Louden, Tennessee)

Tennessee Valley Winery requests a J-6 Waiver for the following products, all of which have been certified by the Tennessee Department of Agriculture to be unavailable from Tennessee producers:

Seyval (550 gallons), Concord (5000 gallons), Muscadine (5000 gallons), Cherries (10,500 tons), Blackberries (6000 tons), Riesling (550 gallons), Cabernet (4 tons), Merlot (1 ton), and Rhubarb (550 gallons).

Verification of blackberries and cherries requested to be made.

Discussion/Action Taken:

Director Elks recommended approval for the J-6 Waiver subject to the verification of the amount of blackberries and cherries requested. Commissioner Bond made a motion to approve the J-6 waiver upon submission of the amount of blackberries and cherries requested. Chairman Jones seconded the motion and it was approved with 2 ayes.

4. CONTESTED CASES: ADMINISTRATIVE CITATION HEARINGS

1. CLAUDIA GRETCHEN CLAUS

On September 28, 2006, Ms. Claudia Claus sold an alcoholic beverage to nineteen year-old confidential informant at the Memphis Pizza Café in Memphis, Tennessee. TABC Agent James Crowe witnessed the transaction. To date, the Respondent has not paid the citation.

Discussion/Action Taken:

Director Elks stated that Claudia Gretchen Claus has paid the citation, so therefore, no action is necessary.

2. RICHARD JOHN ELIA

On September 28, 2006, Mr. Richard Elia sold an alcoholic beverage to nineteen year-old confidential informant at the Side Street Grill in Memphis, Tennessee. TABC Agent B. V. Cathey, III witnessed the transaction. To date, the Respondent has not paid the citation.

Discussion/Action Taken:

Director Elks stated that Richard John Elia has paid the citation, so therefore, no action is necessary.

3. JUSTIN SHAY SIMONEAUX

On September 28, 2006, Mr. Justin Simoneaux sold an alcoholic beverage to nineteen year-old confidential informant at Garcia Wells in Memphis, Tennessee. TABC Agent B. V. Cathey, III witnessed the transaction. To date, the Respondent has not paid the citation; however, he has contacted the Nashville office indicating he wished to pay the citation, and that it would be forthcoming.

Discussion/Action Taken:

Director Elks stated that Justin Shay Simoneaux has paid the citation, so therefore, no action is necessary.

4. SPECIAL OCCASION LICENSES

5. CONSUMER EDUCATION SEMINAR LICENSES

6. PERSONNEL

7. BUDGET -

8. CONSENT ORDERS

9. PENDING MATTERS LIST

10. MISCELLANEOUS –

a) Audit: Chairman Jones requested a meeting with Commissioner of Finance and Administration Goetz and Comptroller of the Treasury Morgan over the findings indicated in the TABC audit for the period 2001-2004. Chairman Jones indicated that he had received information that attacked the integrity of the TABC and its staff. He requested that Director Elks summarize the audit findings and the TABC response. Director Elks indicated that, among the findings was a weakness over cash receipting that had resulted in an employee theft in 2004. Director Elks stated that the employee had been terminated, and that upon termination, the TABC determined that she had embezzled funds from the TABC. The District Attorney's office was immediately contacted, and the employee was criminally prosecuted for a felony. The employee received jail time, three years probation, and was required to make restitution. Additional efforts had been implemented by the staff to address the weakness in cash receipting at that time; any additional suggestions from the Audit department was requested to improve the TABC procedures. However, the Audit department had not notified the TABC of any other suggestions to be implemented. Director Elks further indicated that the TABC had responses for each of the other audit's findings.

- b) **Server Permit:** Christopher Pitts was present at the meeting and requested that his server permit be issued because he was making payments for court costs and fines as previously agreed upon. He testified that his wages have been garnished, and that the balance due is approximately \$1100.00. Discussion was held indicating that Mr. Pitts had previously testified that the monies due had not previously gone to a collection agency; however, SAC Cawthon had contacted the appropriate department and indicated that the monies had in fact gone to collections in approximately 2002 and that no payment until two months ago had been made. At that time, Mr. Pitts wages had been garnished. He further testified that he had been in contact with the collection department for the courts attempting to pay additional monies; however, that department would not allow him to pay additional monies because of the garnishment. Based upon conflicting statements before the Commission, the Commission did not agree to immediately issue a permit. Verification will be made by this office that (1), payments have been made to Collections; (2) how much has been paid; and (3) that amounts offered for payments in addition to the garnishment will not be accepted by the collections department. Such verification shall be made no later than November 7, 2006. Until that date, Mr. Pitts was allowed to continue to work as a waiter. At that time, if verification is made for the three items listed above and is consistent with the information provided by Mr. Pitts, then the server permit will be issued. However, if the information cannot be verified, then Mr. Pitts will not be issued a server permit on that date, and he may appear before the Commission at its next meeting. Chairman Jones made a motion to supply Mr. Pitts' employer a letter stating that he can continue to work until SAC Cawthon can verify that he is still making payments.
- 11. DATE OF NEXT MEETING** – November 16 and December 14, 2006 at 1:00 p.m.

There being no further business the meeting was adjourned.

Shari Danielle Elks
Executive Director

John A. Jones
Chairman